

Davis Polk

James P. Rouhandeh
+1 212 450 4835
rouhandeh@davispolk.com

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

June 14, 2023

Re: *Berenson v. Biden*, No. 1:23-cv-03048-PAE (S.D.N.Y.)

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, New York 10007

Dear Judge Engelmayer:

We represent defendants Dr. Scott Gottlieb and Dr. Albert Bourla in the above-captioned action. Together with counsel for Mr. Andrew M. Slavitt (in his individual capacity), we respectfully move the Court for an order extending the deadline for Dr. Gottlieb, Dr. Bourla, and Mr. Slavitt (the “Moving Defendants”) to move to dismiss, answer, or otherwise respond to the complaint to a date 60 days after all defendants have been served.

Plaintiff Alex Berenson filed this action on April 12, 2023. See Dkt. No. 1. Dr. Gottlieb and Dr. Bourla waived service on April 20, 2023, which set June 20, 2023 as their deadline to respond to the complaint. See Dkt. Nos. 7, 8. Similarly, Mr. Slavitt waived service as a private individual on May 3, 2023, which set July 3, 2023 as his deadline to respond to the complaint in that capacity. See Dkt. No. 14.

Because Plaintiff had not filed proof of service on any of the other defendants, including President Biden, Surgeon General Murthy, and Mr. Flaherty, we contacted Plaintiff’s counsel on June 9 to propose a coordinated briefing schedule upon service of all defendants. On June 12, Plaintiff’s counsel responded and indicated that all defendants had been served in May, and that the remaining defendants’ deadline to respond to the complaint is July 7. In response, we offered to propose a coordinated briefing schedule and asked that Plaintiff agree, in the interim, to extend Dr. Gottlieb’s and Dr. Bourla’s response time to July 7. We have not received a response to that request.

For the reasons explained in the letter filed earlier today by the United States Attorney’s Office (Dkt. No. 16), Plaintiff has not validly served the other defendants, including Mr. Slavitt to the extent he is sued as a former federal official. See Fed. R. Civ. P. 4(i)(2)–(3). Moving Defendants respectfully submit that a single, coordinated schedule for all defendants to respond to the complaint would be most efficient and conserve the resources of the parties and the Court. Plaintiff alleges a single conspiracy among all defendants, and defendants expect to make related and likely overlapping arguments as to why those claims are legally deficient. Further, Mr. Slavitt has been named both as a former government official and as a private individual but has only been served only in the latter capacity. Absent an extension, he potentially would first have to respond to the complaint twice. A consolidated briefing schedule for all defendants, including the other government defendants, who have yet to be served, would avoid these complications, as well as piecemeal motion practice. See *Triton Pac. Sec., LLC v. Mission Critical Servs. Corp.*, No. 19 CIV. 5789 (PAE), 2019 WL 6681557, at *2 (S.D.N.Y. Dec. 6, 2019) (aligning motion to dismiss briefing schedule “so as to avoid duplicative work for all parties”); see also *United States v. Lebanese Canadian Bank Sal*, No. 11 CIV. 9186 PAE, 2012 WL 3854778, at *1 (S.D.N.Y. Sept. 5, 2012) (setting consolidated briefing schedule for motions to dismiss).

Davis Polk

This is the first request for an extension of time. In fact, Moving Defendants did not file this request sooner out of an expectation that Plaintiff would have more promptly served the remaining defendants (or filed proof of such service on the docket). Now that nearly two months have passed and the response deadlines are approaching, the Moving Defendants respectfully submit that an extension to align response times and briefing schedules is warranted.

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ James P. Rouhandeh

James P. Rouhandeh
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

*Counsel for Defendants Dr. Albert Bourla and
Dr. Scott Gottlieb*

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Theodore J. Boutrous Jr.

Theodore J. Boutrous Jr.
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7804

Counsel for Defendant Andrew M. Slavitt

cc: All counsel via ECF

Electronic Filing